

Draft 7/30/09

DEED OF CONSERVATION EASEMENT
(Pine Valley Property – Washington County, Utah)

NOTICE: THIS CONSERVATION EASEMENT HAS BEEN ACQUIRED IN PART WITH FUNDS FROM THE COMMODITY CREDIT CORPORATION THROUGH THE FARM AND RANCH LANDS PROTECTION PROGRAM WHICH IS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE - NATURAL RESOURCES CONSERVATION SERVICE ("NRCS" or "UNITED STATES"). THIS EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE, AGRICULTURAL, AND CONSERVATION VALUES. THE UNITED STATES HAS FOUND THAT THE ADOPTION OF THESE RESTRICTIONS IS IN THE PUBLIC INTEREST.

THIS **DEED OF CONSERVATION EASEMENT** is granted this the _____ day of _____, 2009, by and between the following Grantor:

DeMar LC, a Utah Limited Liability Company

whose address is 753 S. Lexington Dr. St. George, Utah, 84770 (the "**Grantor**"), in favor of the **VIRGIN RIVER LAND PRESERVATION ASSOCIATION**, a Utah non-profit corporation ("**VRLPA**" or "**Primary Grantee**"), the address of which is P.O. Box 1804, St. George, Utah, 84771-1804, and **WASHINGTON COUNTY**, a Body Politic, organized and existing under the laws of the State of Utah (the "**County**" or "**Back-up Grantee**") the address of which is 197 East Tabernacle, St. George, Utah 84770. VRLPA and the County are collectively referred to as the "**Grantee**". The respective roles of the Primary Grantee and the Back-up Grantee are described in Paragraph 25, herein.

The following exhibits are attached hereto and made a part of this Easement:

EXHIBIT A - Description of Property
EXHIBIT B - Map of Property

RECITALS

- A. The Grantor is the sole owner in fee simple of certain real property in Washington County, Utah, encompassing 23.79 acres, more or less, referred to as the "**Property**", described on the attached **EXHIBIT A** and depicted on the attached **EXHIBIT B**.
- B. The Property is located in the meadows of Pine Valley. The Property is substantially undeveloped except for agricultural and ranching uses.
- C. The Property possesses scenic open space, aesthetic, agricultural, ranching, ecological,

wildlife habitat and environmental values (collectively, “**Conservation Values**”) of great importance to Grantor, the Grantee, the people of Washington County, and the people of the State of Utah, which are worthy of protection in perpetuity. Grantor and Grantee recognize that economic development of the Property, except as permitted herein, would have an adverse impact on and greatly impair these conservation values.

D. Among the Conservation Values of the Property, which are more fully described in the Baseline Documentation Report, are the following:

(1). Scenic and Visual. The following conservation purpose, in accordance with Treasury Regulations §1.170A-14(d)(4) is furthered by this Easement, “The preservation of certain open space (including farmland and forest land) for the scenic enjoyment of the general public and will yield a significant public benefit.” Pine Valley is a high-altitude residential summer retreat community and public recreation destination for the region. The Property is visible from all areas of Pine Valley, including the main access road into the community and from the Pine Valley Chapel, an historic site on the National Register of Historic Places. The meadows create the pastoral quality that is Pine Valley's charm. The development of the Property, except as provided herein, would adversely impact and mar the scenic views of the vicinity from public roads, public landmarks, and from the Pine Valley Wilderness Area.

(2). Wildlife. The following conservation purpose, in accordance with Treasury Regulations §1.170A-14(d)(3) is furthered by this Easement, “To protect significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives.” The Santa Clara River flows along the north boundary of the property. The river meanders through the meadow and provides important habitat for early life stages for native fish and other sport fishery species. Public fishing occurs both up and down stream of the meadows. The meadows also support a diversity of species of wildlife. The Property has been tilled and used for agriculture and ranching purposes, but except for such uses, the Property is substantially undeveloped.

(3). Watershed Protection. The following conservation purpose, in accordance with Treasury Regulations §1.170A-14(d)(4) is furthered by this Easement, “The preservation of certain open space (including farmland and forest land) for the scenic enjoyment of the general public and will yield a significant public benefit.” The Property provides important natural land within the watershed of the Santa Clara River. Protection and enhancement of the Property in its natural and open space condition helps to ensure the quality and quantity of water resources for the St. George area, and helps to reduce downstream flooding in the event of high water, such as the flooding of the Santa Clara River that occurred in 2005, all of which provides significant public benefit.

(4). Agricultural and Ranching. The following conservation purpose, in accordance with Treasury Regulations §1.170A-14(d)(4) is furthered by this Easement, “The preservation of certain open space (including farmland and forest land) for the scenic enjoyment of the general public and will yield a significant public benefit.” The Property, except as limited herein, is suitable for agricultural and ranching uses and activities and has been farmed since the 1860's. Preservation of the Property will yield

significant public benefit. The development of the Property, except as provided herein, would adversely impact current and future agricultural and ranching uses and activities.

- E. The parties acknowledge that specific Conservation Values of the Property will be documented in an inventory of relevant features of the Property, which inventory is dated as of the date of the Easement (the "**Baseline Documentation**"). A copy of the Baseline Documentation will be kept on file at the offices of the Grantee. The Baseline Documentation shall consist of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant, and shall be signed by both the Grantor and the Grantee.
- F. The Property is preserved pursuant to clearly delineated federal, state, or local conservation policy and yields a significant public benefit. The following legislation, regulations, and policy statements establish relevant public policy pertaining to the Pine Valley, which includes this Property:

(1). The Pine Valley Community General Plan of 2003, Part of the Washington County General Plan, states:

“There is a quality of life in Pine Valley that is available nowhere else in this area... The valley is a small island surrounded by public land, thus limiting the amount of development that can take place...the size and scale of the community is very important to the residents of Pine Valley...As identified throughout this plan, the residential and open space character of the valley should be protected and preserved while other conflicting uses should...be minimized....This plan attempts to identify in more detail some of the qualities that make Pine Valley what it is, and recommendations are made for maintaining that quality while still allowing the valley to continue to grow and develop” (pg. 3)

“Areas that because of steep slopes, high water table, or other natural considerations should be maintained as agricultural or open space areas in order to protect the health, safety, and welfare of the present and future residents of the valley.” (pg. 8)

“ Continue to encourage uses in agricultural and open space areas that will allow these areas to remain open. Livestock grazing in the valley should be continued and encouraged on low lying lands with a high water table.” (pg. 8)

“Work to maintain the quality of water in the Santa Clara River as it passes through the Pine Valley community.” (pg. 9)

(2). Resolution No. R-2008-1231 of the Washington County Commission states:

“Pine Valley Meadows has scenic, historical, agricultural, ecological, and recreational qualities that are unique and irreplaceable; and... it is in the best interest of general public and the residents of Washington county to protect the

unique qualities of the Pine Valley Meadows; and ...the Washington County Commission finds that the Pine Valley Preservation Project meets the criteria established by the Utah State Legislature and the Quality Growth Commission...”

(3). Utah Quality Growth Act, Utah Code Ann. § 11-38-101 et. seq., which, among other provisions, establishes the LeRay McAllister Critical Land Conservation Fund, that provides funding for the acquisition of critical open land and agricultural land. In part, funding for the acquisition of this Easement has been provided by the LeRay McAllister Critical Land Conservation Fund, which has determined that the Property is worthy of preservation by this Easement.

- G. There is a reasonable possibility that the Grantee may acquire other valuable property rights on nearby or adjacent properties to expand the Conservation Values preserved by this Conservation Easement.
- H. Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of the undeveloped condition of the Property existing at the time of this grant, subject to the uses permitted herein.
- I. Grantor further intends, as owner of the Property, to convey to Grantee the affirmative right to preserve and protect the Conservation Values of the Property in perpetuity.
- J. The Grantee, Virgin River Land Preservation Association, is a publicly supported, tax-exempt non-profit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue code, and Utah Code Section 57-18-3, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, ranch land, forested, and/or open space condition.
- K. The Grantee, Washington County, is a governmental entity, and as such is qualified under Utah Code Section 57-18-3 to acquire a conservation easement by grant.
- L. Substantial funding for the purchase of this Conservation Easement has been provided by the United States of America (the United States) acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) for the implementation of the Farm and Ranch Lands Protection Program (FRPP).

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated by reference into this grant and conveyance of deed of conservation easement, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Internal Revenue Code, and the laws of the State of Utah and in particular the Utah Land Conservation Easement Act, Utah Code Ann. § 57-18-1 et. seq., Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("**Easement**").

- 1. Purpose. It is the purpose of this Easement to assure that the Property, subject to the limited development allowed herein, will be retained forever predominantly for agricultural and

ranching uses and activities, and in its scenic and open space condition, to preserve and protect in perpetuity the aesthetic, agricultural, ranch land, and associated values and characteristics of the Property, to protect the scenic open views from adjoining public areas, including Dixie National Forest and Pine Valley town, to preserve and protect in perpetuity wildlife and riparian habitat, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, while permitting the limited use described herein. Grantor intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Easement and preservation of agricultural and ranching uses and activities and preservation of the scenic and open views from adjoining and nearby public areas, including Dixie National Forest.

2. Authority. This Easement acquisition is authorized by Chapter 18, title 57 of the Utah Code.
3. Affirmative Rights of Grantee. In addition to those rights granted to or reserved to Grantee under Chapter 18, title 57 of the Utah Code, to accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - 3.1. To preserve, protect, and enhance the Conservation Values of the Property;
 - 3.2. To enter upon the Property at reasonable times (and ordinarily not more than two times per year) upon prior notice to the Grantor in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; to enter upon the Property, after giving written notice and with the written consent of the Grantor, to observe, study, and make educational and scientific observations on the Property; provided, however, that any such right of entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property consistent with this Easement;
 - 3.3. To enjoin or prevent any activity on, or use of the Property that is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use;
 - 3.4. To require management of highly erodible land on the property in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide, 7 CFR part 12;
 - 3.5. To review, comment upon, approve or object to any proposed plans relating to prohibited uses and permitted uses as set forth below.
4. Right of Enforcement. Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.
5. Prohibited Uses. An important purpose of this Easement is to preserve the scenic and open land views from adjoining and nearby public areas and to preserve the agricultural and

ranching values, and other Conservation Values of the Property. Any activity or use of the Property inconsistent with the purposes of this Easement and the reserved rights set forth below is prohibited. Without limiting the generality of the foregoing, the activities and uses set forth below are expressly prohibited or restricted.

- 5.1. Subdivision. The legal or de facto division, subdivision, or partitioning of the Property is prohibited. The Grantor may adjust the boundaries of the property or lease all or a portion of the Property for the purposes set forth in Section 5, below, and as otherwise provided herein, provided that such lease shall at all times remain subject to the terms of this Easement.
- 5.2. Residential, Industrial or Commercial Uses. Any residential, commercial, or industrial use of, or activities on, the Property are prohibited, except as expressly permitted in the Reserved Rights below for agricultural purposes. Examples of such prohibited uses are: motel, restaurant, manufacturing, retail store, commercial feedlots, meat or poultry processing facilities, commercial greenhouses, sawmills or logging operations or facilities, wholesale or retail outlets, commercial lodging and commercial recreational uses. A "feedlot" shall be defined for purposes of this Easement as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, that is used for the purpose of engaging in the business of receiving and feeding livestock. Nothing in this section shall prevent Grantor from confining Grantor's livestock into an area for feeding, or from leasing pasture for the grazing of livestock owned by others.
- 5.3. Structures. The placement, construction, or maintenance of any building, structure, or improvement of any kind on the Property is prohibited, except as provided below to support the agricultural uses of the Property.
- 5.4. Surface Alteration. The alteration of the ground surface is prohibited unless it is in accord with general agricultural uses of the Property or as otherwise permitted in the Reserved Rights below.
- 5.5. Granting of Easements for Utilities and Roads. The granting of new easements for utilities and/or roads is prohibited when the utility or road will adversely impact the Conservation Values protected by this Deed of Conservation Easement, including the Property's use for agriculture.
- 5.6. Motor Vehicle Use. The use of motorized vehicles on the Property is prohibited except to support agricultural use, habitat management, law enforcement and public safety, or conservation uses of the Property.
- 5.7. Drilling. The exploration and drilling for, and extraction of oil and gas from any site on the Property are prohibited. Directional drilling accessed by a directional bore hole that is located off this Property is permitted, provided that there is no surface disturbance of the Property. The drilling for water is also permitted as described below.

- 5.8. Waste and Trash. The dumping, burying, or storing of waste, ashes, trash, garbage, or junk on the Property is prohibited, except as permitted in the Reserved Rights below.
- 5.9. Mining, Excavation. All quarrying, mining, excavation, depositing, or extracting of sand, gravel, stone, rock, soil, oil, gas, hydrocarbons, or minerals, of any kind or description is prohibited, except: (a) as may be incidental to agricultural uses and confined to a small, defined area or acreage as approved by Grantee; (b) for excavation incidental to construction of structures as permitted in the Reserved Rights, below; and (c) except as provided in Paragraph 5.4, above.
- 5.10. Hazardous Substances. Dumping, depositing, discharging, releasing, or abandoning any solid or hazardous waste, hazardous substances or material, pollutant, or environmentally harmful debris (including "Hazardous Materials", as defined herein) on or under the Property, or into the surface or ground water on or under the land is prohibited; except such prohibition shall not apply to fertilizers, pesticides, herbicides, and other similar products not prohibited by governmental agencies. Any chemicals shall be used in accordance with manufacturer's specifications and in compliance with all applicable laws and regulations.
- 5.11. Signs. The placement or maintenance of signs, billboards, or any other outdoor advertising of any kind or nature on the Property is prohibited; except for (1) signs relating to the use or limitations on use applicable to the Property; (2) directional and regulatory signs relating to the Property; (3) signs used in marketing the Property for sale or lease; and (4) signs of an informational or educational nature relating to the Property, the conservation values, the parties involved in protecting the Property, and the purposes of the Easement. Signs allowed under these exceptions shall not exceed sixteen (16) square feet in area, nor six (6) feet in height.
- 5.12. Exotic Animals. The raising and breeding of exotic fowl, small game, or big game species on the Property is prohibited.
- 5.13. Airstrip. The construction or maintenance of an airport, airstrip, or heliport on the Property is prohibited, except as may be required temporarily by a governmental entity for emergency purposes.
- 5.14. Recreation Facilities. All recreational uses which require maintenance of a facility or structure on the Property, including without limitation, soccer, football, and baseball fields, golf courses, swimming pools, and similar recreational structures are prohibited, except for such structures and facilities as may be incidental to recreational uses placed or constructed as permitted in the Reserved Rights below.
- 5.15. Power Lines; Communications Towers. The placement, erection, or construction of any additional above-ground power lines on the Property is prohibited. The construction of communications and/or broadcast towers or structures of any type is prohibited anywhere on the Property.

- 5.16. Roadways. The asphaltting or cementing of roadways on the Property is prohibited. Stone or gravel surfacing is allowed.
6. Reserved Rights. The Grantor, their heirs, successors, and assigns shall have all rights accruing from ownership of land and rights in land (including easements), including the right to engage in, or permit, or invite others to engage in, all uses of the Property that are not expressly prohibited herein and/or are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing paragraph, the following uses and activities, including uses and activities incidental and accessory thereto, are reserved and permitted on the Property as set forth below. Notwithstanding any terms to the contrary in this Easement, there is a limit of one (1) acre of the total area covered by this Property that may be devoted to impervious surfaces, which includes areas that are paved, covered by concrete, areas occupied by buildings (with or without walls or floors), including all improvements permitted under this Section 6.
- 6.1. Boundary Adjustment. Upon prior approval of the Grantee, which approval shall not be unreasonably withheld, the Grantor may adjust the boundary lines of the Property with an adjoining property that is encumbered by a conservation easement held by the same grantee as this Easement for the purpose of improving the configurations of the adjoining properties and enhancing the Conservation Values of the Property. In such event, at its cost the Grantor shall prepare the description and map or survey of the amended property descriptions for the review and approval of the Grantee, and at the cost of the Grantee, an amendment shall be recorded evidencing the new description of the properties that is encumbered by each of the conservation easements. At all times the entire Property shall be encumbered by a conservation easement held by the same Grantee as this Easement. The Grantor may also lease all or a portion of the Property for the purposes set forth in this Section 6, below, and as otherwise provided herein, provided that such lease shall at all times remain subject to the terms of this Easement.
- 6.2. Agricultural Production and Ranching. Agricultural and ranching uses and activities (whether currently practiced or not, and whether now known or currently unknown), including without limitation, leveling, tilling soil, planting and harvesting crops, fertilizing, burning fields, raising or keeping livestock, maintaining and improving irrigation ditches and water systems, both culinary and irrigation, installing pipes and sprinklers are permitted. Raising of native trees and other native plants and bushes for commercial sale is permitted. All such uses and activities should adhere to reasonable erosion control practices.
- 6.3. Customary Rural Enterprises. Customary rural enterprises are permitted on the Property. Customary rural enterprises that require their own buildings are prohibited.
- 6.4. Agri-tourism. Low impact agri-tourism activities are permitted, such as farm tours, work experiences, field trips, corn mazes, and hay rides.

- 6.5. Drilling for Water. Drilling and location of water wells (including the placement of above ground generators) and the distribution of water above or below ground is permitted for on site, agricultural purposes.
- 6.6. Impound Water. The impoundment of surface, drainage, spring, and stream water for the benefit of agriculture, livestock, and wildlife, including the placement, construction, maintenance and repair of water retention facilities and structures is permitted.
- 6.7. Hunting. Hunting, trapping, and fishing in compliance with applicable laws and regulations is permitted.
- 6.8. Native Plantings. Planting and maintaining native trees, bushes, and grasses to protect, preserve, and enhance wildlife habitat values of the Property is permitted.
- 6.9. Non-Developed Passive Recreation and Educational Activities. Walking, horseback riding, trailing pack animals, cross-country skiing, hiking, biking, picnicking, fishing, camping, and other similar uses are permitted that do not result in an impact to the soils, agricultural operations, or other impacts to the Property inconsistent with the intent and purposes of this Easement and the values expressed herein.
- 6.10. Roads. Grantor may locate, relocate, maintain, repair, construct, and reconstruct existing and new roadways as may be reasonable for the conducting of agricultural and ranching purposes, including without limitation, the excavation, extraction, and depositing of soil, gravel, rock, and sand necessary and incidental to locate, relocate, maintain, repair, construct, and reconstruct such roadways. Grantor shall notify Grantee prior to the relocation or expansion of existing roads and prior to the construction of any new roads on the Property.
- 6.11. Fences. Grantor may build, maintain, and repair wood, wire, vinyl, metal, and rock fences (including any combinations thereof), which will also contain (or exclude) livestock. No white colored fencing is permitted. Regardless of the materials, fencing shall be only unpainted wood, or painted with low brightness and earth-tones colors so that the visibility of fencing from adjoining and nearby properties is minimized.
- 6.12. Weeds. Grantor is responsible for and may control and eradicate such weeds and flora as are injurious to agricultural and ranching uses and activities and to the Conservation Values of the Property.
- 6.13. Restoration. Grantor may restore damage to the Property, including without limitation, damage to buildings, structures, and vegetation caused by fire, flood, storm, earth movements, or acts beyond the control of Grantor.
- 6.14. Riparian Habitat Restoration and Enhancement. Grantor may restore and/or enhance native riparian habitat consistent with the purposes of this Easement.

- 6.15. Incidental Uses. Grantor may engage in any activity incidental to agriculture and ranching not expressly described above.
- 6.16. Storage. Grantor may store, cover, and maintain agricultural products and operable agriculture and ranching equipment for reasonable periods of time.
- 6.17. Burning and Burying of Trash. Grantor may burn and bury non-hazardous trash and waste produced by the permitted activities on the Property, including the burial of animals, provided that any such activity shall be conducted in accordance with all applicable laws and regulations. The burning, burying, or disposal of hazardous waste is strictly prohibited.
- 6.18. Erosion Control. Grantor may place, construct, maintain, repair, or restore flood, erosion, and drainage management structures and improvements.
- 6.19. Agricultural Operations Not Required. None of the foregoing shall obligate the Grantor to maintain a viable agricultural or ranching operation. Further, the cessation of agricultural or ranching uses shall not prohibit the recommencement of the same. Additionally, the permanent or temporary cessation of agricultural and ranching uses on the Property shall not terminate this Easement, or in any way effect any other provision of the Easement.
7. Prior Notice by Grantor and Approval of Grantee. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the terms and purpose of this Easement. Any enterprise, use or activity proposed to be done or undertaken by Grantor which requires the prior approval of Grantee pursuant to an express provision of this Easement shall be commenced only after satisfaction of the notice and approval conditions of this Section 7.
 - 7.1. Grantor's Written Notice. Prior to the commencement of any enterprise, use or activity requiring Grantee's approval, Grantor shall send Grantee written notice of the intention to commence or undertake such enterprise, use or activity. Said notice shall inform Grantee of all aspects of such proposed enterprise, use or allowed activity. Said notice shall be sent by registered or certified mail, return receipt requested, or by a private delivery service and shall be addressed to Grantee at the address set forth above, or to such other address as Grantor from time to time may be informed of in writing by Grantee.
 - 7.2. Grantee's Response. Grantee shall have thirty (30) days from the mailing of such notice, as indicated by the registered or certified return receipt, or by a private delivery service, to review the proposed enterprise, use or activity and to notify Grantor of any objection hereto. Such objection, if any, shall be based upon Grantee's opinion that the proposed enterprise, use or activity is inconsistent with the purpose of this Easement. If, in Grantee's judgment, conformity with the purpose of this Easement is possible, said notice may inform Grantor of the manner in which the proposed enterprise, use or activity can be modified to be

consistent with this Easement. Grantee's response to Grantor's notice shall be sent by registered or certified mail, return receipt requested, or by a private delivery service and shall be addressed to Grantor at the address set forth above or to such other address as Grantee from time to time may be informed of in writing by Grantor.

- 7.3. Grantee's failure to respond. Should Grantee fail to respond to Grantor's notice within thirty (30) days of the mailing of said notice, and provided that the proposed enterprise, use or activity is not expressly prohibited by this Easement, then it shall automatically be deemed consistent with the purpose of this Easement and Grantee having no further right to object to the enterprise, use or activity identified by such notice.
8. Acts beyond Grantor's control. Grantor shall be under no liability or obligation for any failure in the giving of notice with regard to any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to any person resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any other cause beyond the control of Grantor similar to those occurrences specified.
9. Management of Highly Erodible Land. As required by section 12381 of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the protected Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Conservation Easement Deed based on an Act of Congress, NRCS will

work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

10. Enforcement. Grantee shall have the right to prevent and correct, or require correction of violations of the terms and purposes of this Deed. In the case of a reasonable belief that a violation of this Easement may have occurred and upon 48 hours' prior notice, (which does not have to be given by certified mail,) Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation caused by Grantor, its guests, invitees, or assigns, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may obtain an injunction to require Grantor to restore the Property to its condition prior to the violation.
11. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's and Grantee's costs of suit, including without limitation, attorneys' fees, shall be borne by Grantee.
12. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement, in the event of any breach of any term of the Easement by Grantor, shall not be deemed or construed to be a waiver by Grantee of such term, or of any subsequent breach of the same or any other term of this Easement, or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy, upon any breach by Grantor, shall impair such right or remedy, or be construed as a waiver.
13. Waiver of Certain Defenses. Grantor hereby waives any defense of estoppel, laches, or prescription. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Notwithstanding anything else in this paragraph to the contrary, Grantor shall be entitled to rely upon any written approval given by Grantee.

14. No Public Access Required. No right of access by the general public to any portion of the Property is conveyed by this Easement, provided however, public access may be permitted by the Grantor for the purposes described herein.
15. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication, and the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any mechanics' liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
16. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon ten (10) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payments shall bear interest until paid by Grantor at the rate of six percent (6%) per annum.
17. Responsibility for Actions. Grantor shall hold harmless and indemnify Grantee and its members, directors, officers, employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence or willful misconduct of any of the Indemnified Parties; (2) the obligations specified herein; and (3) the presence or release of Hazardous Materials, as described herein, on, under, or about the Property, unless introduced onto the Property by one or more of the Indemnified Parties. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as it may be amended or recodified.
18. General Indemnification. Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty,

covenant, agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws."

19. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, only upon joint request of the parties, and only by judicial proceedings in a court of competent jurisdiction that determines that none of the conservation purposes can continue to be fulfilled and none of the Conservation Values can continue to be protected. Each party shall promptly notify the other when it first learns of such circumstances. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishments, shall be determined (unless a greater amount for Grantee's proceeds is provided by Utah law at the time), in accordance with the "Proceeds" paragraph, below
20. Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value of at least ninety percent (90)% of the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable solely to improvements permitted hereunder) (the "**Easement Value**"). For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.
21. Condemnation. If this Easement is taken, in whole or in part, by exercise of the power of eminent domain, or if circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other party when it first learns of such circumstances. Grantee shall be entitled to compensation in accordance with applicable law, after the satisfaction of prior claims, from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or any portion of the Property subsequent to such termination or extinguishment. Grantee's compensation shall be an amount equal to the Easement value as determined pursuant to Paragraph 16 above, multiplied by the amount of the full proceeds from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or a portion of the Property.
22. Assignment. This Easement is transferable after consultation with the Grantor, but Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, (b) authorized to acquire and hold conservation easements under Utah law. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.
23. Subsequent Transfers; Subordination of Mortgages. Grantor agrees to incorporate the terms of this Easement by reference into any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of

any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way, nor shall it invalidate any such transfer. The Grantor covenants and represents that at the time of granting of this Easement and at all times in the future, any mortgage or deed of trust is and shall be subordinate to the terms of this Easement.

24. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, addressed as follows:

To Grantor: at the address shown above

To Grantee: at the address shown above or to such other address as either party from time to time shall designate by written notice to the other.

25. Recordation. Grantee shall record this instrument in timely fashion in the official records of Washington County, and may re-record it at any time as may be required to preserve its rights in this Easement.

26. General Provisions.

- 26.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Utah.
- 26.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 26.3 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 26.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- 26.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 26.6 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their

successors and assigns and shall continue as a servitude running in perpetuity with the Property.

- 26.7 Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 26.8 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 26.9 Amendment. If circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument, provided that such amendment does not permit subdivision of the property (except for a boundary adjustment described above) and does not affect the qualifications of this instrument under any applicable laws. Any amendment must be consistent with applicable federal and state laws, shall not confer improper private benefit, shall be consistent with the amendment policies of the Grantee, shall be consistent with the conservation purposes of this instrument and shall not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and shall only be effective upon recorded in the records of the Clerk and Recorder of the County in which the Property is located.
- 26.10 No Third Party Beneficiary. This Easement is entered into by and between the Grantor and the Grantee, and except as provided herein, is solely for the benefit of the Grantor and the Grantee, and their respective successors in interest and assigns and does not create rights or responsibilities in any third parties.
- 26.11 No Transfer of Development Rights. Grantor hereby grants to Grantee all development rights, including the right to grant any access across the Property for the use of any property other than this Property, except for the particular development rights specifically reserved herein, for the limited purpose of ensuring that such rights are forever terminated and extinguished and may not be used on or transferred off of the Property to any other property, adjacent or otherwise, or used as a credit for density of development anywhere, by Grantor, Grantee, or any other party.
- 26.12 Grantor's Title and Access Warranty. Grantor warrants that Grantor has good and sufficient title and access to the Property and hereby promises to defend Grantee against all such claims from all persons whatsoever.
- 26.13 Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened

release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment."

- 26.14 No Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the parties expressly provide in writing that they intend a merger of estates or interests to occur and such merger does not provide improper private benefit.
- 26.15 Grantee Acknowledgment of Donation. The Grantee acknowledges receipt and acceptance of this Easement encumbering the Property described herein, for which no goods or services were provided other than the consideration which was paid to purchase the Easement at a bargain sale price.
27. Notice Concerning Conservation Easements in Utah. Grantor acknowledges receipt from Grantee of notice, as provided in and in compliance with Utah Code Section 57-18-4(4), at least 3 days prior to the granting of this Easement, advising Grantor that this easement is a perpetual restriction on the use of Grantor's Property limiting the use of the Property to

those uses described in the Easement, that the Easement may be enforced by the Grantee, that it is legally possible to create other types of conservation easements, including ones that are not perpetual, that easements may be donated or sold, and that the Grantor should contact an attorney concerning any possible legal and tax implications of granting a conservation easement prior to granting this Easement.

28. Compliance with Laws. All uses of the Property shall comply with all applicable laws and regulations.

29. Responsibilities of Primary Grantee and Back-up Grantee.

29.1 Monitoring. Primary Grantee shall have the primary responsibility for interacting with Grantor and for monitoring the terms of this Easement. Except in case of emergency, Primary Grantee shall notify Back-up Grantee at least seven days in advance of undertaking any monitoring required or permitted hereunder. Primary Grantee shall file a written report of any monitoring activity with Back-up Grantee within 30 days of such activity and provide a copy to Grantor, and shall notify Back-up Grantee in writing of any matter which Primary Grantee believes requires enforcement.

29.2 Approval. Primary Grantee shall have responsibility for responding to Grantor on any notification or request for action from Grantor, and Primary Grantee shall notify Back-up Grantee of any action taken or response given to such a request by Grantor.

29.3 Enforcement. Primary Grantee shall have the primary responsibility for enforcing the terms of this Easement. Prior to taking any enforcement action Primary Grantee shall give written notification to Back-up Grantee, and shall discuss the proposed action with Back-up Grantee. Unless otherwise agreed between Primary Grantee and Back-up Grantee, Primary Grantee shall be responsible for directing any efforts to enforce the Easement and Back-up Grantee shall be responsible for all expenses, including, without limitation, all attorneys' fees, incurred in connection with such enforcement. Back-up Grantee will cooperate in any such enforcement action to the extent reasonably necessary to properly prosecute such action.

29.4 Independent Action. Back-up Grantee shall have the right to conduct such independent monitoring and investigations under the terms of the Easement as it deems appropriate. Back-up Grantee shall notify Primary Grantee and Grantor at least seven (7) days in advance of undertaking any monitoring or investigation required or permitted hereunder. Back-up Grantee shall file a written report of any monitoring activity with Primary Grantee within thirty (30) days of such activity and provide a copy to Grantor, and shall immediately notify Primary Grantee in writing of any matter which Back-up Grantee believes requires enforcement.

GRANTOR:

By:

STATE OF UTAH }
COUNTY OF WASHINGTON }

The foregoing instrument was acknowledged before me this _____ day of _____, 200____,
by

my hand and official seal.

WITNESS

My commission expires: _____

Notary Public

GRANTEE (Virgin River Land Preservation Association):

By:

STATE OF UTAH }
COUNTY OF WASHINGTON }

The foregoing instrument was acknowledged before me this _____ day of _____, 200____,
by

_____ WITNESS

my hand and official seal.

My commission expires: _____

Notary Public

GRANTEE (Washington County):

By:

STATE OF UTAH }
COUNTY OF WASHINGTON }

The foregoing instrument was acknowledged before me this _____ day of _____, 200__,
by _____

_____ WITNESS
my hand and official seal.

My commission expires: _____

Notary Public

ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

State of _____

County of _____

On this _____ day of _____ 2009 before me, the undersigned, a Notary Public in and for the State, personally appeared _____, known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be her/his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of _____
Residing at _____
My commission Expires _____

EXHIBIT A

DESCRIPTION OF PROPERTY

(Attach)

EXHIBIT B

MAP OF PROPERTY

(Attach)